

UNITED STATES TAX COURT
WASHINGTON, DC 20217

SAM T. JEWELL,)
)
 Petitioner(s),)
)
 v.) Docket No. 25467-12 L.
)
 COMMISSIONER OF INTERNAL REVENUE,)
)
 Respondent)

ORDER

On October 15, 2012, the petition in this case was filed. Petitioner seeks review of the notice of determination sustaining the filing a notice of Federal tax lien against petitioner with respect to petitioner's unpaid trust fund penalty liabilities for taxable periods ended December 31, 2004, June 30, 2008, September 30, 2008, December 31, 2008, March 31, 2009, June 30, 2009, September 30, 2009, December 31, 2009, and March 31, 2010.

On June 30, 2014, respondent filed a Notice of Proceeding in Bankruptcy informing the Court that petitioner filed a petition with the United States Bankruptcy Court on June 29, 2014, after filing his Tax Court petition in this case. In an Order dated July 1, 2014, we, among other things, stayed all proceedings in this case pursuant to 11 U.S.C. section 362(a)(8).

On July 31, 2014, petitioner filed a Motion for Reconsideration of Order seeking this Court to reconsider our July 1, 2014, Order. Petitioner asserts that the automatic stay under 11 U.S.C. section 362(a)(8) does not apply here because a decision in this Tax Court case would neither increase or decrease the tax liability owed by the bankruptcy-debtor, Mr. Jewell.

On August 22, 2014, respondent filed a Response to petitioner's motion. Respondent contends the automatic stay is applicable, and that this Court properly stayed the proceedings in this case pursuant to 11 U.S.C. section 362(a)(8). We agree with respondent.

Title 11 of the United States Code provides uniform procedures designed to promote the effective rehabilitation of the bankrupt debtor, and when necessary, the equitable distribution of the debtor's assets. See H. Rept. 95-595, at 340 (1977); Prevo v. Commissioner, 123 T.C. 326, 328 (2004). One key to achieving these aims is the automatic stay, which generally operates to temporarily bar actions against or concerning the debtor or property of the debtor or the bankruptcy estate. The automatic stay provisions are set forth in 11 U.S.C. section 362(a). Prevo v. Commissioner, 123 T.C. at 328. Significantly, 11 U.S.C. section 362(a)(8), as

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amended by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 effective with respect to petitions for relief under the Bankruptcy Code filed on or after October 17, 2005, bars the commencement or continuation of a Tax Court proceeding concerning an individual debtor's prepetition taxes (taxes incurred before entering bankruptcy). Kovitch v. Commissioner, 128 T.C. 108, 111 n.6, 112 n.7 (2007); People Place Auto Hand Carwash, LLC v. Commissioner, 126 T.C. 359, 362 n.6 (2006). Unless relief from the automatic stay is granted by order of the bankruptcy court, see 11 U.S.C. section 362(d), the automatic stay generally remains in effect until the earliest of the closing date of the bankruptcy case, the dismissal of the bankruptcy case, or the grant or denial of a discharge, 11 U.S.C. sec. 362(c)(2); see Prevo v. Commissioner, 123 T.C. at 328.

The plain language of 11 U.S.C. section 362(a)(8) provides that the automatic stay bars the continuation here in this case of this Tax Court proceeding. 11 U.S.C. sec. 362(a)(8); see, e.g., Prevo v. Commissioner, 123 T.C. at 331, and n. 4 (2004) (holding that since Tax Court petition under I.R.C. section 6320 was filed in violation of automatic stay, we lacked jurisdiction in that lien case; noting further that if taxpayer there first had filed his Tax Court petition and then filed a bankruptcy petition, that taxpayer's proceeding in this Court would have been active and then stayed). Petitioner's reliance on Kovitch v. Commissioner, 128 T.C. 108 (2007), is misplaced. In Kovitch, we held that the automatic stay did not bar our continuation of a deficiency case brought by the petitioner-wife of the debtor who raised an innocent spouse relief claim, because a decision in that case could neither increase nor decrease the tax liability of the nonpetitioning, intervenor debtor-husband who had filed a bankruptcy petition, since that nonpetitioning debtor-husband's tax liability was not before us and at issue in that deficiency case. Kovitch v. Commissioner, 128 T.C. at 111-113.

Upon due consideration, it is

ORDERED that petitioner Motion for Reconsideration of Order, filed July 31, 2014, is denied.

**(Signed) Kathleen Kerrigan
Judge**

Dated: Washington, D.C.
September 29, 2014